

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,

Third Floor, Historic Court House,

Boonville, IN

Monday, April 11, 2016, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Jeff Willis, Vice-President; Bill Byers, Doris Horn, Brad Overton and Richard Reid.

Also present were Morrie Doll, Attorney, Sheila Lacer, Assistant Director, Molly Barnhill, and Kim Kaiser, staff.

MEMBERS ABSENT: Amanda Mosiman.

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Doris Horn and seconded by Bill Byers, the Minutes of the last regular meeting held March 14, 2016, were approved as circulated.

The President explained the rules of procedure.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-16-01 Fadheel Estates by Hiero Alaaddin Fadheel, Owner. 12.651 acres located on the E side of Grimm Rd. approximately 525' N of the intersection formed by Grimm Rd. and Willow Pond Rd. Ohio Twp. *Complete legal on file. (Advertised in The Standard March 31, 2016)*

Scott Buedel was present.

The President called for a staff report.

Mrs. Lacer stated we have all green cards except one from Blue Herron Development LLC.; we do have the white pay receipt showing it was mailed before the 21 day deadline. She said the zoning is "R-1A" One Family Dwelling and there is no flood plain on this property. She said this is a 2 lot subdivision and the Commissioners approved no improvements to Grimm Rd. She said the Drainage Board approved no drainage plans required due to the large size of the lots. She said Newburgh Sewer sent a letter stating they have capacity, and Chandler Utilities has capacity for water. She said the proposed development is a 2 lot residential subdivision (4.859

acres and 7.311 acres). She said there are no conditions but we have a letter asking for no sidewalks, however the Ordinance does require sidewalks on lots this large. She said the plat in in order.

The President asked if Mr. Buedel had anything to add.

Mr. Buedel said it will just be the two lots; Ferris is ready to build on the northern, five acre lot. He said the other lot will be hopefully sold off at some point.

Richard Reid asked if he was next to the water tower.

Mr. Buedel said yes.

Being no more questions from the Board and no remonstrators present the President called for a motion.

Richard Reid made a motion to approve PP-16-01 and that is without sidewalks. The President said he guesses we are waiving sidewalks.

Mrs. Lacer said the Ordinance does not require them to ask for a waiver because the lots are so large.

The President said then he does not think we need a separate motion but we can add that to the motion just for clarification. He called for a second on the motion to approve the plat with no sidewalks.

The motion was seconded by Jeff Willis and unanimously carried.

PP-16-04 Heron Lake Estates II by Heron Lake Estates, LLC, Melvin C. Greer, Mbr. OWNER: Same. 187.25 acres located on the W side of Eby Rd. 0' SW of the intersection formed by Eby Rd. and Kelly Rd. Boon Twp. *Complete legal on file. (Advertised in The Standard March 31, 2016)*

Jim Biggerstaff and Melvin Greer were present.

The President called for a staff report.

Mrs. Lacer stated we are missing 3 green cards from; Amanda L. Cundiff, Patricia A & Alan G. Bennett; Kip R. Beard. She said we do have all of the white pay receipts showing all notices were mailed out March 19, 2016. She said the zoning is Agriculture which has a minimum requirement of 2 ½ acres per lot if they are going to be on septic which she believes they are. She stated there is flood plain on this property; they are in the process of having a LOMA done on part of this subdivision to remove it from the flood plain but they have not received any of that paperwork back yet. She said this is a 22 lot subdivision. She said she believes it is 20 residential lots and 2 large out-lots. She said the Commissioners approved their street

construction plans today and the Drainage Board has approved their drainage plans with the condition that trash guards are going to be required. She said Aaron Franz has submitted a letter stating that he “will approve the primary plat on the condition that the lots have usable and approvable septic sites for the final plat.” She said she does not believe they have done all of their soil testing yet so that will be a condition that prior to any secondary approval the soil tests are done and shown on the plat. “Each lot, except for lot #1 has adequate area and should be approved per the proper soil testing.” She said Veolia Water has submitted a letter stating they do have capacity to serve the subdivision. She said this is a 20 lot residential subdivision with one 41.14 acre out lot for future development and a 19.91 acre out lot for wetland and recreational use. She said the plat is in order and again approval would be subject to soil tests being done and shown on the secondary plat.

Richard Reid stated this is right north of Boonville Country Club for your information.

Attorney Doll asked if it would be conditioned upon the LOMA too.

Mrs. Lacer stated they could get their subdivision on the LOMA; if they don’t get the Letter Of Map Amendment every structure would have to have a certified plot plan, done by an engineer, certifying it is 2 feet above the BFE.

Being no further questions from the Board and no remonstrators present the President called for a motion.

Richard Reid made a motion to approve PP-16-04.

Doris Horn said she would second that motion, with the condition that they test the soil. The motion was unanimously approved.

PP-16-05 Three Lake Estates Phase III by Pamela Cullison, Owner. 5.04 acres located on the S side of New Harmony Rd. 0’ SW of the intersection of New Harmony Rd. and Three Lakes Dr. Lot 1C of Lot 1 of Corrective Plat of Three Lakes Estates. Campbell Twp. (*Advertised in The Standard March 31, 2016*)

Jim Morley Jr., Morley and Associates, Project Engineer was present.

Mrs. Lacer stated we are missing 6 green cards from certified mail; we have all of the white pay receipts showing they were mailed before the 21 day deadline and to the correct addresses on file in the Auditors office, and she does not have the names of those 6. She said this property is zoned “C-4” General Commercial and most of this development is in a flood plain. She said that means that any structure that is built will have to have a certified plot plan showing it is 2 feet above the base flood elevation 10 feet around the perimeter.

The President said wait a minute, we are on the wrong one.

Mrs. Lacer said she has skipped a subdivision; she is so sorry. She said lets rewind this then. She said we have all of the return receipts. She said this is zoned agricultural which requires 2 ½ acres per lot if it is on septic. She said this is not in a flood plain and it is only 2 lots. She said Commissioners approved no improvements to New Harmony Road or Three Lakes Drive; there is no access to Three Lakes Drive so both lots will come in and out of New Harmony. She said the Drainage Board approved no drainage plans were required. She said we have a letter from Aaron Franz stating they “will approve the primary plat on the condition that the lots have usable and approvable septic sites for the final plat.” She said each lot has one approved soil site but two are required for each buildable lot. She said there were two on the original lot, they are splitting the lot, so now they each have one. She said Elberfeld Water has capacity. She said it is a 2 lot residential subdivision and it is in order.

Being no questions from the Board and no remonstrators present the President called for a motion.

Doris Horn made a motion to approve PP-16-05.

The motion was seconded by Richard Reid and unanimously carried.

PP-16-07 Arbor Pointe Section 3 by Route 66 Development, LLC Bruce Bennet, Mbr.
OWNER: Same. 20.4 acres located on the E side of Grimm Rd 0’ NE of the intersection formed by Grimm Rd and SR 66. Ohio Twp. *Complete legal on file. (Advertised in The Standard March 31, 2016)*

Mrs. Lacer said we are missing the 6 green cards but we do have the white pay receipts. She said this is zoned “C-4” General Commercial and most of this development is in the flood plain and any structure will require a certified plot plan certifying it is at least 2 feet above the base flood elevation or they will have to file for a LOMA. She said this is a proposed 12 lots. She said they are proposing that Town Place Drive and Titan Way are 50’ wide ingress/egress easements only. She said the ordinance says...

Non Residential lots located within a subdivision plat in a “C-1” Neighborhood Commercial zoning district that do not front and have direct ingress and egress to and from the proposed building site from a dedicated street or right-of-way maintained by the county or other participating jurisdiction, shall be properly demonstrated to the Commission as to adequate ingress and egress for each use/structure. This must be clearly documented as an egress/ingress easement on the plat. *Amended 1/9/12.*”

The easement must have only one way in and out and shall not be a connector between two (2) roadways. The easement shall be designed and built to the same standards as a private street as described in the Subdivision Control Ordinance. Said easement shall be given a “street name” for addressing purposes if necessary.

Mrs. Lacer stated in site review the County Engineer agreed that this would fall under this regulation; however it is up to this Board whether it is showing adequate ingress and egress. She said lots 10, 11, and 12 shall only have access through Stahl road and the internal ingress-egress easement. She said they shall have no access to or from Grimm Road. She said lot 9 shall access internal ingress-egress easement and a right-in-only access from Grimm Road near the middle of the west line of Lot 9. She said the Commissioners have approved no improvements to Grimm or Stahl Road. She said the County Attorney is reviewing an agreement they will be entering into about a right-in/right-out barrier that they are going to do. She said the Drainage Board approved their Drainage plans today. Mrs. Lacer said on the sewer, we do not have a letter from Newburgh yet. She said they have asked Newburgh Sewer for capacity but they are still reviewing so we do not know if this is going to have capacity or not. She said she called them last week, and Jim has been speaking with them and they still have not sent anything on whether or not they are going to have capacity or not. She said water can be supplied by Chandler. She said this is a 12 lot subdivision and the plat is in order. She asked Attorney Doll if they can approve this subject to a capacity letter.

Attorney Doll said yes.

The President asked if Jim Morley Jr. had anything to add.

Jim Morley Jr. said he asks that they approve this subject to the capacity letter. He said it sits right on the trunk line that feeds the new master lift station there.

The President asked what are lots 13 through 20 on here; if it is only a 12 lot subdivision is this not part of it.

Jim Morley Jr. said it is more than a 12 lot subdivision. He said it is all of the lots that are there. He said for those of you who were her about 10 years ago, this is basically the same subdivision that was filed about 10 years ago and was filed as Arbor Pointe Subdivision. He said that was filed right before the recession hit. He said a new developer has purchased that property and is redoing it so to speak. He said the lot lines are basically the same; the only difference is they want their streets to be private not public. He said a capacity letter was granted back then for Arbor Pointe and the service area is roughly the same now as to what it was back then. He said it is pretty much the same plat that was approved 10 years ago.

Mrs. Lacer said it is a 20 lot subdivision; that was a typographical error on the staff report and she apologizes.

The President asked where Titan Way starts. He said we have Town Place Drive here...

Mrs. Lacer said Town Place stops here and then Titan...

The President asked if that was a private road all the way until it hits Grimm Road and Stahl Road will be a stub that will end at Town Place.

Jim Morley Jr. said yes and there is a commercial drive that was approved earlier where Town Place starts and Stahl ends and where Grimm ends and Titan starts.

Mrs. Lacer said those have already been approved and they will have to put up a letter of credit to guarantee construction.

The President asked where the right-in only off of Grimm on lot 9 somewhere in the middle of that lot, is that still in question or is it already been agreed on.

Jim Morley Jr. said that has already been approved as a right-in only and originally the developer wanted it closer to the highway but Bobby wanted it closer to the middle of the lot which is why we amended the language on the plat to say it will be in the middle of the lot.

The President said but it is not shown.

Jim Morley Jr. said it will show up on the site plan. He said they currently have someone looking at it and they drew a site plan up for them and it is in the middle of the lot.

The President said so roughly 240 feet away from SR 66.

Jim Morley Jr. said yes but 239 feet or 241 feet does not make it wrong. He said the intent is it is about in the middle and not down right next to the highway.

The President said he heard something about the island that is drawn here, is that still in question or what is going on with that.

Jim Morley Jr. said it is not an issue of question; the county and the developer are going to enter into an agreement, which is actually an agreement that was crafted about 8 or 9 years ago for a different use on that corner which is basically a temporary access agreement that turn that into a temporary full access intersection. He said lets say they build the road next week, next week it will be a full access intersection because right now you could about have a picnic on Grimm Road and not get hit by a car; there is no need for the right-in only because there is no traffic. He said however it is anticipated that in the future Grimm Road will have the traffic to generate that and so the agreement states that either after 5 years has occurred or the traffic count on Grimm Road becomes 4000 AADT cars per day then the developer, who has to post a letter of credit from the beginning will install a barrier island to force the right-in right-out only.

The President said so there will be a letter of credit put up for that now because in five years it could be a different developer.

Jim Morley Jr. said yes, it is a letter of credit issue and the reason for that is the commercial folks of the world will tell you there's never enough ways to get in and out of a site, and the planners of the world will say we want all of the intersections as far away from other intersections as we can get. He said for the next roughly 5 years, while there is not a heavy traffic load on Grimm, for the restaurants or whatever goes in there, they can develop a good customer base while it is

really easy to get in and out. He said whenever 4000 cars occur, they have already established their customer base and if they want to say get a cup of coffee in the morning, well now it's a little harder to get in and out but man, they have a great cup of coffee. He said but if they go with a right-in right-out from the beginning some people may never stop for coffee because it was too much of a pain to get back there. He said so that is the reason for the agreement, which has already been approved, it just needs to be signed by the county and the developer. He said Attorney Glass's only concern with it is it was a document that was drafted previously by another attorney and on the last page it has his name so he will have to take his name off. He said that was his only concern.

Richard Reid asked if the access on 10, 11, and 12, will they come off of Stahl Road or will there be a little lane to those 3 lots.

Jim Morley Jr. said it ultimately depends on how they are developed. He said they are currently looking at one use for those three lots and they will probably have more than one access. He said the reason the lots are set up in the manner that they are is they can always combine lots and build across lot lines that don't have easements on them, but we'd have to come back here to split lots. He said there are several uses that need a lot that wide and there are several that need a wider lot and so the intent there is that they didn't want to make something so big that they'd have to come back and split it again and if somebody comes in with a big project they can go right in there and build across the lot lines because there are no easements on a majority of those lot lines. He said that was also the original intent of Arbor Pointe and is also the intent on High Pointe Centre North so it is a pretty common idea.

The President said he thinks the idea is to limit the access on Grimm by staying on Stahl but can there not be access off of Town Place Drive.

Jim Morley Jr. said sure there can, there just can't be on Grimm. He said the idea was to keep the accesses off the Grimm Road directly.

Being no further questions from the Board, and no remonstrators present the President called for a motion.

Attorney Doll said it would seem to him that the motion would need to address the verification of sewer capacity and finding that there is adequate ingress-egress, and that it is in fact a 20 lot subdivision and not a 12 lot subdivision as the agenda indicated.

Jim Morley Jr. asked what he meant, the finding of, did he need to do anything.

Attorney Doll said as part of the motion it indicates that the ingress-egress question has to be clearly demonstrated on the plat and his recommendation is that they take care of that tonight and indicate that it is adequate.

Jim Morley Jr. said so finding that it is adequate.

Attorney Doll said yes.

Richard Reid made a motion to approve PP-16-07 subject to the capacity of sewer and also that adequate ingress-egress on that property.

Attorney Doll said is found.

Richard Reid said is found.

Attorney Doll said and also that it is a 20 lot subdivision and not a 12 lot.

Richard Reid said and it is a 20.

Jim Morley Jr. asked if they were making it subject to adequate ingress-egress.

Attorney Doll said it has been found.

Jeff Willis seconded the motion and it was unanimously carried.

The President said the next two will be done at the same time; we will make a motion on the zoning before we do the primary.

PC-R-16-04 Petition of R & J Trucking, LLC by Julie Hornbrook, Ptnr. OWNER: Same. To rezone 21.2249 acres located on the N side of New Harmony Rd approximately ½ mile E of the intersection formed by New Harmony Rd. and Eskew Rd., Boon Twp. from “A” Agricultural to “PUD” Planned Unit Development consisting of “R-1D” One Family Dwelling. *Complete legal on file. (Advertised in The Standard March 31, 2016)*

PP-16-08 Hornbrook Haven PUD by R & J Trucking, LLC, Julie Hornbrook, Ptnr. OWNER: Same. 21.2249 acres located on the N side of New Harmony Rd approximately ½ mile E of the intersection formed by New Harmony Rd. and Eskew Rd. Boon Twp. *Complete legal on file. (Advertised in The Standard March 31, 2016)*

Bill Bivins and Julie Hornbrook were present.

The President called for a staff report.

Mrs. Lacer stated she will do the two staff reports together. She said we have all of the return receipts for the notice to adjacent property owners for both applications. She said this is a 21.22 acres. She said the Comprehensive Plan has no projection for this area. She said there are currently two unattached accessory buildings on the property and all of the surrounding property is zoned Agricultural. She said this rezoning was filed to divide their land into 2 lots with a private road. She said there is no flood plain on the property. She said they have a private rock road that fronts onto New Harmony Road. She said this is a residential use and it will be in compliance with the Zoning Ordinance. She said with the primary staff report, the

Commissioners did approve the 20' private road of compacted stone with 3' shoulders and 2' side ditches. She said the Drainage Board ruled that there were no drainage plans required due to the large size of the lots. She said each lot has 2 soil sites approved for septic systems. She said we have a letter from Aaron Franz stating cisterns would be approved for the subdivision but we also have a capacity letter from Veolia; she thinks there was a problem with the water lines and road improvements and he called at the end of the day and said that with the new highway going in two houses had been cut off and that he did have the capacity. She said this is a 2 lot subdivision; it is in order for approval and any condition on the primary plat would be subject to the rezoning being approved by the County Commissioners if this Board approves it tonight.

Bill Bivins said the state has taken right-of-way off of Boonville-New Harmony for the new 61 so they have access.

Richard Reid asked if that was the new bypass.

Bill Bivins said yes.

The President asked if there were existing buildings on the property now.

Bill Bivins said there are two accessory buildings on there now.

The President asked if the intent was to build two residences.

Bill Bivins said yes.

Richard Reid asked if the first thing they want is the rezoning.

The President said we will consider that first. Being no remonstrators present and no further questions from the Board the President called for a motion on the rezoning.

Richard Reid made a motion to recommend approval to the County Commissioners for PC-R-16-04.

Doris Horn seconded the motion and it was unanimously carried.

Mrs. Lacer stated on the private road, Hornbrook Drive, it does say there is a 50' ingress/egress easement to Larry McNeely. She said this is set up years ago before Mrs. Hornbrook ever purchased her property. She said this is an easement that goes to the property in the back that is landlocked; they spoke with Attorney Doll who said the easement stood. She said Mrs. Hornbrook is aware that it is there; there is a private roadway that will access her property but Mr. McNeely will still be allowed to use that ingress/egress easement.

The President called for a motion on the primary plat.

Richard made a motion to approve PP-16-08. The motion was seconded by Jeff Willis and unanimously carried.

The President stated that all of that is contingent on the rezoning that will be heard on May 9th at 4:00pm by the County Commissioners.

PC-R-16-05 Petition of MSK Holdings, LLC by Philip Rawley, Mng. Mbr. OWNER: Glenn H. Allen Revocable Trust and Dolores L. Allen Revocable Trust by Glenn H. Allen, Trustee. To rezone 55.785 acres located on the E side of Epworth Rd. a distance of 0' NE of the corner formed by the intersection of Epworth Rd. and Warrick Trail from "A" Agriculture to "C-4" General Commercial. Ohio twp. *Complete legal on file. (Advertised in The Standard April 7, 2016)*

Marco Delucio, Attorney with Ziemer, Stayman, Weitzel & Shoulders representing MSK Holdings, was present.

The President called for a staff report.

Mrs. Lacer stated that we do have all of the return receipts from certified mail of notice to the adjacent property owners. She said this is 55.78 acres and according to the Comprehensive Plan is projected to be commercial. She said the surrounding zoning is as follows; Property to the North is zoned "C-4" General Commercial and is vacant farm ground. She said the property to the South zoned "C-4" and is St. Mary's. She said property to the East is Agricultural with vacant farm ground. She said property to the West has some "C-4" with Colonial Landscaping and The Oncology Hematology Associates. She said there is also some Agriculture zoning with vacant farm ground, and "R-1A" One Family Dwelling zoning with a single family dwelling. She said most of this property lies within an AE floodplain; they will either need to obtain a LOMA before they pull permits to build or they will have to submit certified plot plans certifying the base is at least 2 feet above the base flood elevation. She said they will access Warrick Trail and Epworth Road. She said the stated use is commercial and the application is in order. She said also they do have a special use filed that will go to the next Board of Zoning Appeals meeting for a hospital, SU9.

The President asked if they had anything to add.

Marco Delucio said as he looks through the factors that they consider for a rezoning this application seems to fit all of the criteria. He said it is not spot zoning; it's in conformity with the Comprehensive Master Development Plan. He said they are currently doing a traffic impact study to address any traffic issues. He said they would ask their approval. He said Dr. Paul Perry is present tonight so if they have any questions as is a representative of the property owner.

Richard Reid said for the information for the Board members this is where the IU Medical Facility was going to go.

Ascertaining there were no remonstrators present and being no questions from the Board the President called for a motion.

Richard Reid made a motion to recommend approval to the County Commissioners for PC-R-16-05. The motion was seconded by Doris Horn and unanimously approved.

OTHER BUSINESS:

Formal Complaint – Pennymac Corp – 7266 Edgedale Dr. Newburgh, IN – Alleged public nuisance. Cease and desist letter sent December 17, 2015.

Mrs. Lacer stated March 30th the Zoning Inspector went to the site again and he has reported that the yard has been cleaned up, the fence is locked and secured; the cats are still in the attic but we can't do anything about the cats and the pictures are in their packets.

Attorney Doll said so the option is to find that they are no longer in violation.

Mrs. Lacer said yes.

Attorney Doll said it has been foreclosed upon. He said it is owned by a company called Pennymac headquartered in California, but there has been significant progress.

Mrs. Lacer said apparently someone got his letter.

The President said and it is secured.

Mrs. Lacer said it is secured with a padlock.

Doris Horn asked if they contacted the corporation that owns this.

Mrs. Lacer stated they sent them a letter then took it to the Board who had Attorney Doll send them a letter.

Attorney Doll said he sent a letter to two different locations. He said they didn't get any response but they did get the property pretty much cleaned up.

Jeff Willis made a motion finding the property no longer in violation and to remove it from the agenda.

Brad Overton seconded the motion and it was unanimously carried.

Foley Minor Subdivision #2

Mrs. Lacer said Jim Morley Jr. came in earlier today and they spoke with Attorney Doll about this. She said this property was done as a minor subdivision back in 2004. She said there were some existing ingress/egress easements and somehow some more easements got recorded on it when they probably shouldn't have. She said the one parcel they want to split up. She said when they approached Sherri she said she didn't see how it was going to be divided because the frontage on this is blocked by a large lake. She said it is our stand that frontage means you have to have 50' of continuous road frontage all the way back to the building site and that frontage has to be ingress/egress not just frontage on a road 50' back and then you can't get to it because of a lake. She said so Jim has a request to the Board.

Attorney Doll said on the colored drawing that Jim has now provided they will see a yellow road, that is the original easement and it was extended, and it went to the rear of the property and there is a home back here in the green area on the left hand side that is served by that easement as is the other property along the way in the white. He asked Jim if he agreed.

Jim Morley Jr. said yes.

Attorney Doll said there is also a little drop easement that was added at that time for reasons he does not know that touches the orange parcel. He said to try to qualify for the 50' frontage rule two additional roadways were placed in the white areas were subdivided so they could actually acquire frontage on Hewins Road. He said but you will notice that those narrow, and nobody here had anything to do with that but they narrow; they start out at 50' then they go to something less like 20' and we are not sure how that passed mustard at the time but that was years ago. He said now what Jim is looking for is some guidance, they have the green, the orange and depending on which draft you are looking at the purple that they wish to develop and our county ordinance requires them to have 50' feet of frontage on a county road. He said the problem is this lake, this is former coal mine property, and there is a lake that pretty much cuts the entire area blocking frontage for the whole parcel, the two parcels, or the three parcels, depending on how they split it up, that keeps them from being able to comply with the county's ordinance requirement. He said they met today to try to explain what the ordinance means, and he can't speak for Sherri but it is his opinion that the APC has always required the 50' of frontage to be actual access. He said it is not just 50' of land but that you can drive a vehicle across it to get to the building lot and clearly that cannot be done here. He said perhaps they could fill in a portion of the lake, create a short public road with a cul-de-sac, or fill in one portion of the lake and create one 50' frontage and allow that to serve one building lot. He said this is ground that you probably can't spend a lot of money developing, and so the question gets to be is there some other way, like a variance or something because of the unique circumstances of the land; it is not like the lake was dug, it is a preexisting condition of the land. He said at one point in time all of these lots were owned by a common owner.

Jim Morley Jr. said common family.

Attorney Doll said so the prior subdivision in effect dictated the access frontage dilemma that Jim is facing.

Mrs. Lacer said she believes that part of this too is the frontage starts out at 50' and then it goes down to 20', this is another reason that the ordinance was changed, it must be 50' continuous frontage, it can't narrow down below 50' any longer.

Attorney Doll said another reason we think that is it has to be wide enough for access.

Mrs. Lacer said wide enough access and to possible build a road in the future.

Attorney Doll said what the county is worried about based on past experiences is things like fire trucks and ambulances and thing of that sort being able to reach destinations in the proposed lot. He said he thinks they are looking for guidance on how to do this. He said we can't answer hypothetical questions but we can look at his two proposals here and see if the Board is encouraging.

Jim Morley Jr. said he thinks he brings a layout that meets the letters of the law but perhaps not the intent or application of the law in the past. He said in the ordinance it says you have to have 50' of frontage, the application has been in the past that the frontage also has to be the access; it does not technically say that in the code but we also don't want to fight that fight, what we are trying to do is move forward on an opportunity here. He said he met with Sheila and Morrie beforehand and what they have in front of them is two exhibits; one has two colors on it and the other has 3. He said the Foley's prefer the 3 color one. He said they would like to create two other lots but as they can see it doesn't matter if they divide it into 2 lots or 3 lots or don't split it at all, there is a lake that pretty much takes up all of their frontage off of the road...prohibits their access off of the road. He said currently all of the orange the green is one lot and the Foley's drive back to their lot through the yellow easement.

Attorney Doll said even though the other two frontages are platted nobody is using them...correct?

Jim Morley Jr. said yes.

The President asked who owned them, they are not colored.

Attorney Doll said they go with the white lots.

The President said so the easement that they are accessing to their property with is not even on their property. He said down the road it is 100 feet away from their property even.

Attorney Doll said further than that.

Jim Morley Jr. said by the time it gets back to their lot it does touch their property. He said but up at the front you are correct, they are driving through somebody else's property 100' from their property.

Attorney Doll said nobody is using the frontage for access; they are all using the old easement.

Jim Morley Jr. said in reality not even the house in the back that the easement goes to, it is not even on their property that they kept. He said so everybody is driving across somebody else's piece of property to get home. He said there is nobody that is driving on their own property to get home. He said so the Foley's have a desire to split this and what they want to do is three lots. He said so they said that the purple lot is the existing home and they are going to get to their property the way that they always have. He said the orange lot would access the yellow stub that is an existing ingress/egress easement so it's not a new way of getting to the property; it is an existing platted one. He said the green lot we would have to add that little stub on that you see tacked on to the bottom of the yellow. He said that is the Foley's preference of what that subdivision would look like. He said if the Planning Commission says no way, no how then their plan B would be a two lot subdivision in which the green accesses the existing yellow, where it has always accessed, and the orange accesses the existing yellow where it's had the ability to access since 2004; for clarification we did not do the original plat on this. He said this would be their plan B and the reason that both of these is plan A and plan B is that nobody wants to fill in a lake which is an attribute to the property, to be able to get back to the home sites. He said everybody out there has worked off of this common shared drive and that is the intent as to how these people would go in. He said so their preference is to have a 3 lot approved and to access through the easements just like the color exhibit but if that is not acceptable then they are seeking some kind of guidance to what would be an acceptable option if the intent of the ordinance also means access then can they fill in enough of that lake to get a driveway across and have it inspected or shown on a map...really just seeking some guidance. He said if they fill in part of the lake for access do they have to use that. He said he feels like they have met the letter of the law but he also understands the intent of the law but they are not here trying to cram anything on anybody they are here trying to let the Foley's do something they want to do with their property but also not put the county in a bind. He said a project like this is probably not a high enough value to pay for a road extension or right-of-way off of other people. He said the reality is if they don't access the existing road it probably sinks the deal.

Richard Reid asked what the lake looked like and if they had a picture of it.

Jim Morley Jr. said they looked at it on an aerial photo; it is just an old stripper pit.

Richard Reid asked if it was very deep.

Jim Morley Jr. said he does not know. He said his guess is a pond that size probably not terrible deep but he doesn't really know.

Mrs. Lacer said Sherri had said our Ordinance does not allow access by easement, which is basically what we would be doing by allowing that split without those lots having frontage so that is why she put it on the agenda today because she did not know where the Board wanted to go on this. She said she does know that in the past they had an access issue where there was lake they had to fill in and we required them to do a hold harmless agreement because they had to fill in on some kind of a minor subdivision and they had to fill in to give them access and do the hold harmless because it was over a body of water.

Doris Horn asked if Sherri's opinion was that this would not work.

Mrs. Lacer said her opinion was that we cannot allow access by easement and frontage means for access.

Attorney Doll said and it is not just this site it's the precedent we establish.

Jeff Willis asked what the difference was between this and the easement we just approved for Hornbrook.

Mrs. Lacer said that one was a private driveway...a private road.

The President said it was a 50' road.

Mrs. Lacer said they had an existing old easement that has nothing to do with the Planning Commission but an old easement of record so we are having them put that on the plat as a paper trail. She said they are putting a private roadway on it but he still has access by deed from years past.

Attorney Doll said the fact that they will characterize it as a private road doesn't destroy the old easement that the neighbor holds. He said he will get to use their private road pursuant to his contractual easement that he has had for many years.

Mrs. Lacer said when this property was owned by the Foleys it was all family and this easement that you see that is in yellow that they are all using was an easement of record.

The President said and by that private road they are building it to private road standards and they can't get that easement to those standards he believes.

Jim Morley Jr. said we only have a 20' easement and again the size of the project doesn't warrant coming in and building that drive to county standards.

Bill Byers asked if nobody was using the 100' between the easement and their property why don't they buy that.

Attorney Doll said they can't because that is their frontage and would bring their lot out of compliance with the ordinance.

The President said it was chopped up long ago.

Jim Morley Jr. said in his opinion their options are to split it like he has shown on the map or to fill in enough of the lake to extend a roadway across the lake but he thinks the roadway is cost prohibitive. He said so it really comes down to something like this and they allow access by easement or they fill in the lake.

Attorney Doll said it would be his opinion that the 50' frontage is meant to be access so it has to be capable of being access so it can't be blocked by a lake. He said however they have asked the question if it has to be used for access. He said how an individual gets to his property if he has another means of getting to it say by use of an easement stub.

The President said Sherri will argue with you on that.

Attorney Doll said he knows, he doesn't think they can dictate that but they can say you can't have a lake blocking 50' of right-of-way that gives them frontage or 50' of land that gives them frontage on a county road because the ordinance was intended to guarantee that every lot would have access to a county road. He said so if they use it then great but right here are two people that aren't using it.

The President said he doubts they could get a firetruck back to them right now.

Attorney Doll said it may depend on the conditions.

Jim Morley Jr. said his driveway is 9' wide so his guess is they could get a firetruck back there; they may not be able to turn around in the driveway, they may have to use the yard but for the most part he thinks they could get their emergency equipment back there. He said they may have to back out but he is sure that they could get in. He said at the end of the day they are trying to figure out if they have any opportunities to split off one or two lots from what they've got.

The President said Bobby talked about in site review, the way they have it drawn, he said he would do a shared drive but he said he still thinks they were talking about filling in that end of the lake.

Jim Morley Jr. said it is his understanding that the northern end of the lake is the shallow end so if they said they will let the purple lot continue to access by easement and if you fill in that northern tip and put one crossing across it and let them both cross at that same location.

The President said because then they would both have 50' of frontage at the road and then a shared drive across it.

Mrs. Lacer said she thinks it has to be 50' each. She said if he wants to split it like this then they would have to have 25' on each side; they could do that.

Jim Morley Jr. said if they are not going to utilize the yellow easements for access then they don't have any other choice than to fill in the lake somewhere.

The President said he doesn't think they can tell him to use those easements because it does not match our ordinance. He said he thinks the only thing they can do is shared drive and to fill in that end of the pit.

Jim Morley Jr. said for the green and orange lot they are talking about.

The President said yes, he likes the layout because they have the 50' even though they are using the existing easement back there, they have the frontage and he doesn't think they should take that away from them.

Jim Morley Jr. said if they did a shared drive down that lot line between the orange and the green and filled in the lake to make that happen, could the purple lot continue to be as it has always been. He questioned if they would have to fill that lake in or could they continue to use that yellow easement because they have always used that yellow.

The President said they are not looking to build anything else on that lot...

Attorney Doll asked how has the purple house...

Jim Morley Jr. said it was on the plat in '04.

Attorney Doll asked when the ordinance changed to require 50' of frontage.

Jim Morley Jr. said that house has 50' of frontage.

Attorney Doll said yeah, but if they do this division it probably doesn't.

Jim Morley Jr. said the purple will still have the frontage.

Attorney Doll said so you are going to leave that across the bottom it is just not actually accessible. He said unless you can determine that the purple house is pre-existing nonconforming use with access by easement then you don't require the gymnastics of the purple strip across the bottom. He said he is worried that if you grant a 50' frontage that isn't an actual accessible strip of ground for access then you have created a really dangerous precedence. He said he would rather they approve the shared driveway and let the green and orange have frontage, not require that purple strip across that back and say the reason is that the house on the purple property is a pre-existing non-conforming use prior to the requirement of 50' of frontage.

The President said but he already owns all of this.

Attorney Doll said he knows he does but he has never accessed it that way, he has always accessed by the easement. He said it is a really dangerous precedent if you say as long as you have 50' of road frontage; we don't care if there is a mountain or the deepest lake possible there.

The President said but we do that is why we are saying the shared drive on that and he is saying that they would never be able to do anything else there.

Attorney Doll said he understands that, his question is do they need the purple strip across the bottom.

The President said he doesn't think it matters one way or not but otherwise you are land locking it. He said at some point somebody might fill in that whole lake and then they may need their 50 feet.

Mrs. Lacer stated when this was done they showed the lake and an area where they could get to it but that is not right.

Jim Morley Jr. said on the aerial photo it looked like it went over to the property line.

Brad Overton said it looks like what we want to do is fill in on the north side of that lake to allow the shared driveway and conform with the access of the required frontage; we don't have to do anything with the purple because of the pre-existing condition already allowing the access by easement. He said so if we meet our frontage requirement by filling in the lake for a shared driveway...

The President said for those two but the question Morrie was throwing out there was should we be putting that other 50' of frontage out there knowing they cannot have access, or do we eliminate that and we are still creating a landlocked...

Mrs. Lacer said yes by allowing the property to be split and even though it's access by easement it still has frontage we are allowing them to further divide the property and create on that is accessed by easement only.

Attorney Dolls said there are no good options.

Doris Horn said that just needs to be filled in.

The President said he thinks perhaps the engineering firm should come with an idea and present it back to them because he doesn't think they have an answer for him.

Jim Morley Jr. said is it safe to say that the Planning Commission, no matter how many lots it gets split up to they would like to see that every lot has 50' of continuous frontage and have the ability to have access to the building the site.

The President said that is the intent, so his two lots with the shared drive accomplishes that even though they may want to use that one still they still have the shared drive here. He said when you throw the third lot in it makes it more difficult.

Attorney Doll said the rights to the shared drive would have to be legally...

Jim Morley Jr. said yes with some sort of ingress-egress on the plat.

Mrs. Lacer said with 25' on each side of the line.

Jim Morley Jr. said that is not a problem we can do that, we are just trying to figure out how to get home on this project.

The President said yes because in site review we were scratching our heads on this one.

Brad Overton asked if the exhibit with the two colors the best option with the shared drive.

Attorney Doll said it is the easiest and they would still have to fill in the tip of the lake.

Jim Morley Jr. said they do not want to do anything to keep the purple lot from getting any permits in the future; they want to make sure they are square with the Planning Commission as they go forward on this.

Jeff Willis said they were talking about the other lots not having 50' of frontage because it goes through and snakes through there; what if the county went through and widened Hewins Road so now they are no longer 50' they have 48'.

Attorney Doll said that is a good point and it is why the ordinance now says 50' of continuous frontage but it is a condemnation for a state highway project; if the set-backs are compliant and the state comes in and condemns right-of-way, like on 261, and takes property and now the set-back requirements are not in compliance anymore, that is not a violation. He said he is just troubled by the purple lot.

Jim Morley Jr. said unless they fill in the lake on the south end too.

Attorney Doll said yes, and then it would be in compliance.

Jim Morley Jr. said then what is considered wide enough for vehicular access.

Attorney Doll said apparently 20'. He said that is really a question that Bobby Howard would have to answer because he is concerned about fire trucks and ambulances.

Jim Morley Jr. said but that is an ingress-egress...

Attorney Doll said he understands but it has to be able to have emergency vehicles access it. He said Bobby has more experience on that so we would want to know his thoughts on that.

Jim Morley Jr. said he is asking because he needs something to tell his client. He said if they have to fill in the lake for their driveway then how much do they need to fill. He said once it is out of the right-of-way he doesn't think they can say that necessarily which is why he has a hard time understanding why the county has a hold harmless on a driveway.

Attorney Doll said that is for emergency vehicles in case it fails. He said if we can't get a truck back there or out and somebody dies because an ambulance can't to them or a house burns down because they can't get the fire trucks back there, then the county gets sued; well you approved

the road so you should of made it wide enough to get your firetrucks back there. He said we are not going through that fight.

Jim Morley Jr. said okay that is easy to get. He said so what he has heard is that each lot has to have 50' of frontage and access and if two of the lots want to share an access they could, with easements on the plat, and he should consult with Bobby Howard for what the required amount of access is.

Attorney Doll said for guidance. He said that may not be something that is binding with the APC but it might be considered as guidance.

Jim Morley Jr. said so if he comes back to the Planning Commission with a 3 lot minor...

Attorney Doll said with the proposal to fill in two ends of the lake.

Jim Morley Jr. said yes, could they then tell them what the required driveway access width is.

The President said we would have Bobby Howard's input on it at that point.

Mrs. Lacer stated minor subdivisions usually are not approved by the APC Board; normally they are done in office through the staff.

The President said so it might be even easier.

Jim Morley Jr. asked if the staff would tell him then.

The President said if they don't then they will bring it to the Board.

Attorney Doll said we don't get this question very often obviously.

The President said we can't speak for Sherri but she may be okay with it with Bobby's approval and if not it could come back to the Board.

Mrs. Lacer said and if she is not comfortable signing it, it may have to come back to the Board.

Jim Morley Jr. said okay, thank you.

ATTORNEY BUSINESS:

EXECUTIVE DIRECTOR BUSINESS:

Being no other business the President called for a motion to adjourn. Richard Reid made a motion to adjourn. Seconded by Brad Overton and unanimously carried. Meeting adjourned at 7:19p.m.

Guy Gentry, President

ATTEST:

Sheila Lacer, Assistant Director